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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AMAZON.COM SERVICES LLC
and AMAZON LOGISTICS, INC.,

Plaintiffs,

v.

NATIONAL LABOR RELATIONS
BOARD, a federal administrative agency,
LAUREN M. MCFERRAN, in her official
capacity as the Chairman of the National
Labor Relations Board, MARVIN E.
KAPLAN, GWYNNE A. WILCOX, and
DAVID M. PROUTY, in their official
capacities as Members of the National
Labor Relations Board, JENNIFER
ABRUZZO, in her official capacity as
General Counsel of the National Labor
Relations Board, and J. DOE, in his or her
official capacity as National Labor
Relations Board Administrative Law
Judge,

Defendants.

Case No. 2:24-cv-09564

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs AMAZON.COM SERVICES LLC and AMAZON LOGISTICS, INC. (together, "Amazon") bring this action for declaratory and injunctive relief, to prevent Defendants NATIONAL LABOR RELATIONS BOARD ("NLRB" or "Board"), LAUREN M. MCFERRAN, MARVIN E. KAPLAN, GWYNNE A. WILCOX, DAVID M. PROUTY, JENNIFER ABRUZZO, and J. DOE from engaging in unconstitutional administrative proceedings designed to unlawfully force Amazon into collective bargaining with the Teamsters.

Specifically, Defendant Abruzzo seeks an order requiring Amazon to bargain with the Teamsters on behalf of the former employees of a former contractor to Amazon Logistics, called Battle Tested Strategies LLC ("BTS"). BTS is an independent delivery business that had a contract with Amazon Logistics to pick up packages from a facility known as "DAX8" and deliver them to customers who purchased those packages on Amazon.com. After BTS repeatedly breached its contract by operating vans that could not pass inspection or otherwise should have been grounded and by failing to pay its insurance provider, Amazon Logistics notified BTS that it was terminating the contract between them. Within a week after receiving that termination notice, BTS decided to recognize the Teamsters as the bargaining representative for its drivers and dispatchers and signed an agreement with the Teamsters covering all the key terms and conditions of employment for its employees.

The Teamsters promptly turned around and demanded that Amazon Logistics recognize and bargain with them over the BTS employees even though Amazon never employed BTS's employees. Amazon Logistics lawfully declined those demands. Nevertheless, Defendant Abruzzo and her agents are now pursuing a claim before the other Defendants that Amazon was obligated to recognize and bargain with the Teamsters regarding BTS's employees, even though this claim is contrary to longstanding Ninth Circuit and NLRB case law.

Pertinent to this lawsuit, Defendant Abruzzo is doing all this in proceedings pending before an administrative agency that is unconstitutionally constructed. Accordingly, Plaintiffs bring this action for declaratory and injunctive relief to stop those proceedings, alleging as follows:

INTRODUCTION

1. This action stems from an attempt by Defendants, in NLRB Case Nos. 31-CA-317349, 31-CA-319781, and 31-CA-320596, to violate Amazon's fundamental right to due process by forcing it to bargain with a union that has never even participated in, much less won, an election to represent any employee of Amazon and to achieve this objective by use of an administrative proceeding whose basic structure violates Article II of the Constitution of the United States of America.

2. Article II vests all executive power in the President of the United States, "who must 'take Care that the Laws be faithfully executed.'" *Seila Law LLC v. CFPB*, 591 U.S. 197, 203 (2020).

3. To discharge that responsibility, the President must be able to remove subordinate officers who have been appointed to carry out the President's duties. *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 513-14 (2010).

4. The existence of unconstitutional removal protections inflicts harm by limiting the President's constitutional authority and also produces an administrative bureaucracy that operates on regulated parties without the constitutionally required "degree of electoral accountability." *Collins v. Yellen*, 594 U.S. 220, 252 (2021).

5. Because such removal protections affect not just the President, but also ordinary Americans who must interact with the administrative state, it makes no legal difference whether the President objects to a given statutory limit on his or her removal powers: "the separation of powers does not depend on the views of individual Presidents, nor on whether 'the encroached-upon branch approves the encroachment.'" *Free Enter. Fund*, 561 U.S. at 497 (citations omitted).

1 issued by the NLRB Regional Director for NLRB Region 31, whose primary office is in
2 Los Angeles, California, and the administrative hearing in the matter is scheduled to
3 occur in Los Angeles, California.

4 **PARTIES**

5 11. Amazon.com Services LLC is a limited liability company duly organized
6 and existing under the laws of the State of Delaware. It is authorized to do business in
7 Los Angeles County, California.

8 12. Amazon Logistics, Inc. is a corporation duly organized and existing under
9 the laws of the State of Delaware. It is authorized to do business in Los Angeles County,
10 California.

11 13. Defendant NLRB is an administrative agency of the United States,
12 headquartered in Washington, D.C. The NLRB enforces the National Labor Relations Act
13 ("NLRA"). Under the NLRA, the NLRB is "empowered . . . to prevent any person from
14 engaging in any unfair labor practice." 29 U.S.C. § 160.

15 14. Defendant Abruzzo is the General Counsel of the NLRB. She is sued in her
16 official capacity. When an unfair labor practice charge is filed, the person may file a
17 charge with a regional director, who acts on behalf of the General Counsel. 29 C.F.R. §
18 101.2. The regional director then investigates the charge. *Id.* at § 101.4. "If the charge
19 appears to have merit and efforts to dispose of it by informal adjustment are unsuccessful,
20 the regional director issues a complaint on behalf of the General Counsel." *Id.* at § 101.8;
21 *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 598 U.S. 771, 793 (2023)
22 (internal quotations omitted) (Justice Jackson, dissenting). When a General Counsel's
23 complaint issues, "an administrative law judge (ALJ) holds a hearing and issues a
24 decision...." 29 C.F.R. §§ 101.8–101.12; *Glacier Nw.*, 598 U.S. at 793.

25 15. Defendant McFerran is the Chairman of the NLRB. She is sued in her
26 official capacity.

16. Defendant Kaplan is a Member of the NLRB. He is sued in his official capacity.

17. Defendant Wilcox is a Member of the NLRB. She is sued in her official capacity.

18. Defendant Prouty is a Member of the NLRB. He is sued in his official capacity.

19. Defendant Doe is an Administrative Law Judge of the NLRB assigned to preside over the NLRB proceedings against Amazon, whose identity has not yet been disclosed to Amazon. Defendant Doe is sued in his or her official capacity.

FACTS

20. Battle Tested Strategies LLC ("BTS") is an independent business that once had a contract with Amazon Logistics.

21. Pursuant to that contract, BTS picked up packages at a facility known as "DAX8" in Palmdale, California, and delivered those packages to customers who ordered the packages on Amazon.com.

22. After BTS repeatedly breached its contract with Amazon Logistics by operating vans that could not pass inspection or otherwise should have been grounded and by failing to pay its insurance provider, Amazon Logistics terminated its contract with BTS.

23. On April 14, 2023, BTS's owner, Johnathan Ervin, was notified that BTS's contract with Amazon Logistics was being terminated and that BTS would make its last deliveries for DAX8 on June 24, 2023.

24. Ervin responded to this news by contacting Teamsters Joint Council 42, recognizing the Joint Council as the bargaining representative for BTS's drivers and dispatchers, and then promptly executing a collective bargaining agreement with the Joint Council, applicable to those employees.

1 25. None of BTS's employees voted for this, much less did they vote in an
2 election involving Amazon.

3 26. Nevertheless, the Joint Council and Teamsters Local 396 demanded that
4 Amazon Logistics commence bargaining with them, jointly, based solely on BTS's prior
5 decision to recognize and bargain with the Joint Council.

6 27. Amazon Logistics declined the request.

7 28. BTS stopped servicing DAX8 after June 24, 2023.

8 29. Defendant Abruzzo has already concluded that Amazon Logistics lawfully
9 terminated its contract with BTS before the Teamsters' demand for recognition from and
10 bargaining with Amazon Logistics. She also does not challenge BTS's decision to
11 terminate the employment of all its drivers and dispatchers.

12 30. Nevertheless, on September 30, 2024, Defendant Abruzzo, acting through
13 one of her Regional Directors, issued and served Amazon with a Consolidated Complaint
14 in NLRB Case Nos. 31-CA-317349, 31-CA-319781, and 31-CA-320596, including a
15 Notice of Hearing on the allegations in the Consolidated Complaint, setting the hearing to
16 commence on March 25, 2024, in Los Angeles, California, before Defendant Doe.

17 **Exhibit A.**

18 31. Among other things, the Consolidated Complaint alleges that Amazon and
19 BTS jointly employed the drivers and dispatchers who worked for BTS and that this
20 meant Amazon was required by law to bargain with Joint Council 42, merely because
21 BTS decided to recognize and bargain with Joint Council 42.

22 32. Specifically, the Consolidated Complaint alleges that Amazon should have
23 bargained with the Joint Council about the effects of the termination of BTS's contract on
24 BTS's employees. Defendant Abruzzo is pursuing this claim, even though Amazon never
25 employed BTS's employees.
26
27
28

**COUNT I – BOARD MEMBERS ARE UNCONSTITUTIONALLY
INSULATED FROM REMOVAL**

33. Amazon restates and incorporates by reference each and every allegation of the preceding paragraphs, as if fully set forth herein.

34. NLRB Members exercise substantial executive power under the Constitution when administering and enforcing the NLRA.

35. For example, Section 10(j) of the NLRA states: "The Board shall have the power, upon issuance of [an administrative] complaint as provided in [29 U.S.C. § 160(b)] charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court . . . for temporary relief or restraining order." 29 U.S.C. § 160(j). This is quintessential prosecutorial power. *See, e.g., McDermott v. Ampersand Pub., LLC*, 593 F.3d 950, 956 (9th Cir. 2010) (explaining that the Board has the authority to "*initiate and prosecute* injunction proceedings under Section 10(j)") (emphasis added) (internal citations omitted); *Overstreet v. El Paso Disposal, L.P.*, 625 F.3d 844, 852 (5th Cir. 2010) ("Petition power under § 10(j) is prosecutorial in nature.").

36. The NLRB also determines appropriate units for the purpose of collective bargaining and directs representation elections. 29 U.S.C. § 159. The NLRB also is empowered to prevent persons from engaging in an unfair labor practice, to issue subpoenas, to engage in rule making, to conduct union representation elections, and to seek enforcement of its orders in the U.S. Court of Appeals. 29 U.S.C. §§ 156, 160.

37. In these and other ways, the NLRB has substantial prosecutorial, rulemaking, policymaking, and adjudicative power.

38. When "the activities of administrative agencies 'take "legislative" and "judicial" forms," 'they are exercises of—indeed under our constitutional structure they *must be* exercises of—the "executive Power.'" *Seila Law*, 591 U.S. at 216 n.2 (2020) (citation omitted).

1 39. The NLRB's Members, including the Chairman, may be removed by the
2 President only "upon notice and hearing, for neglect of duty or malfeasance in office, but
3 for no other cause." 29 U.S.C. § 153(a). This restriction on removing Board Members
4 frustrates the President's constitutional mandate to take care that laws are faithfully
5 executed.

6 40. Without such unconstitutional removal restrictions, the Board Members
7 could be removed by the President—including based on their conduct during the
8 proceedings in NLRB Case Nos. 31-CA-317349, 31-CA-319781, and 31-CA-320596.

9 41. The combination of the Board Members' exercise of substantial executive
10 power and their strict removal protections violates Article II of the Constitution. *See*
11 *Space Expl. Techs. Corp. v. NLRB*, No. W-24-CV-00203, 2024 WL 3512082 (W.D. Tex.
12 July 23, 2024), *appeal filed*, No. 24-50627 (5th Cir. Aug. 1, 2024) (finding substantial
13 likelihood that Board Members are subject to unconstitutional removal procedures).

14 42. Being subject to proceedings before unconstitutionally insulated agency
15 officials is a "here-and-now injury" justifying pre-enforcement judicial intervention.
16 *Axon Enter.*, 598 U.S. at 191 (citation omitted).

17 43. Amazon is "entitled to declaratory relief sufficient to ensure that the
18 [administrative] standards to which [Amazon is] subject will be enforced only by a
19 constitutional agency accountable to the Executive." *Free Enter. Fund*, 561 U.S. at 513.

20 44. Without injunctive relief, Amazon will be forced to undergo an
21 unconstitutional proceeding before agency officials who are impermissibly protected
22 from Presidential oversight.

23 45. Amazon has a high likelihood of success on this claim.

24 46. Amazon will be irreparably harmed by having to proceed before an NLRB
25 whose Members are unconstitutionally insulated from presidential oversight.

26 47. If the Board Members reviewing the ALJ's decision issue a decision against
27 Amazon, Amazon would be irreparably harmed because of the difficulty of obtaining
28

1 redress for an unconstitutional proceeding by improperly insulated administrative
2 officials. *See Collins v. Yellen*, 594 U.S. 220, 257-60 (2021).

3 48. The harm of Amazon being subject to an unconstitutional proceeding
4 outweighs any harm to the NLRB if injunctive relief is granted.

5 49. The grant of injunctive and declaratory relief on this claim will serve the
6 public interest by protecting Americans' constitutional rights.

7 **COUNT II – THE NLRB'S ADMINISTRATIVE LAW JUDGES ARE**
8 **UNCONSTITUTIONALLY INSULATED FROM REMOVAL**

9 50. Amazon restates and incorporates by reference each and every allegation of
10 the preceding paragraphs, as if fully set forth herein.

11 51. Like Board Members, discussed *supra*, NLRB ALJs (1) wield significant
12 executive power and (2) are subject to unconstitutional removal restrictions.

13 52. NLRB ALJs are "Officers of the United States" under the Constitution's
14 Appointments Clause, and not mere employees. While they are not "principal officers"
15 like NLRB Members, they are "inferior officers" subject to the Appointments Clause.
16 They wield significant executive power because, among other things, they are designees
17 of the Board Members discussed above and hold appointed positions through which they
18 hold the responsibility for the conduct of all unfair labor practice hearings, including
19 presiding over the adversarial hearing, determining evidentiary issues, receiving
20 testimony, making factual inquiries, shaping the administrative record, approving
21 settlements, determining the timeframe for the conduct of the hearings, issuing the
22 ultimate decisions for unfair labor practice charges, and "[taking] any other necessary
23 action authorized by the Board's published Rules and Regulations." *See* 29 C.F.R. §§
24 102.35, 102.153; *see also* 29 U.S.C. §§ 153, 160, 161; *Int'l Bhd. of Boilermakers, Iron*
25 *Shipbuilders, Blacksmiths, Forgers & Helpers of Am., AFL-CIO, Boilermakers Union*
26 *Loc. 6 v. NLRB*, 872 F.2d 331, 332 (9th Cir. 1989) ("Section 102.35 gives an ALJ wide
27 authority, subject to the rules and regulations of the Board."); *Space Expl.*, 2024 WL
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3512082, *7 (citing 29 U.S.C. §§ 154, 159, 160) (noting that "the NLRB enforces the NLRA when . . . appointing inferior officers including . . . ALJs").

53. Indeed, an ALJ's decisions in unfair labor practice matters constitute a final determination not subject to *sua sponte* Board review. "If no exceptions are filed, the administrative law judge's decision and recommended order automatically become the decision and order of the Board pursuant to section 10(c) of the Act." 29 CFR § 101.12. Accordingly, they wield significant executive power.

54. ALJs are subject to a strict, multi-layer removal process. The NLRB may attempt to remove ALJs only for "good cause established and determined by the Merit Systems Protection Board" ("MSPB"). 5 U.S.C. § 7521(a). In turn, MSPB Members are removable only for "inefficiency, neglect of duty, or malfeasance in office," 5 U.S.C. § 1202(d), and as noted, Board Members are removable only "for neglect of duty or malfeasance in office, but for no other cause," 29 U.S.C. § 153(a).

55. The statutes' provision of multiple layers of removal protection prevents the President from exercising the President's authority over ALJs and violates the Constitution. *See Free Enter. Fund*, 561 U.S. at 492-508.

56. Without these unconstitutional removal restrictions, either the ALJ assigned to NLRB Case Nos. 31-CA-317349, 31-CA-319781, and 31-CA-320596 or the Board Members who bear responsibility to supervise and exercise control over the ALJ findings would face the prospect of removal by the President based on their conduct during the proceedings.

57. Being subject to unconstitutional agency authority—including proceedings before unconstitutionally insulated officials—qualifies as a "hear-and-now injury" under Supreme Court precedent. *Axon Enter.*, 598 U.S. at 191 (citation omitted).

58. Accordingly, Amazon is "entitled to declaratory relief sufficient to ensure that the [administrative] standards to which [Amazon is] subject will be enforced only by a constitutional agency accountable to the Executive." *Free Enter. Fund*, 561 U.S. at 513.

60. Amazon has a high likelihood of success on this claim.

62. The harm to Amazon outweighs any harm to the NLRB if such relief is granted.

PRAYER FOR RELIEF

1. Declaring that:

2. Upon a hearing of this cause, preliminarily enjoining Defendants from subjecting Amazon to further proceedings in NLRB Case Nos. 31-CA-317349, 31-CA-319781, and 31-CA-320596 pending the final resolution of this action;

1 4. Upon a trial of this cause, permanently enjoining Defendants from subjecting
2 Amazon to further proceedings in NLRB Case Nos. 31-CA-317349, 31-CA-319781, and
3 31-CA-320596;

4 5. Awarding Amazon its costs and expenses incurred in bringing this action,
5 including, but not limited to, reasonable attorney's fees; and

6 6. Awarding such other and further relief, whether at law or in equity, as the Court
7 deems just and proper.

8
9 DATED: November 5, 2024

Respectfully submitted,

SEYFARTH SHAW LLP

11
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